IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 4240 of 1995

Between:

1 Veerabattula Nageswara Rao, S/o. Sattaiah.
R/o. Kaspapentapadu, Pentapadu Mandal,
West Godavari District.
2 Tungala Ramana Rao, S/o. Apparao.
R/o. Kaspapentapadu, Pentapadu Mandal,
West Godavari District.
3 Medicherla Nageswara Rao, S/o. Dasaradha Rama Rao.
R/o. Kaspapentapadu, Pentapadu Mandal,
West Godavari District.
4 Davala Easwara Rao, S/o. Kannaiah.
R/o. Kaspapentapadu, Pentapadu Mandal,
West Godavari District.
5 Davala Kannarao, S/o. Easwara Rao.
Kspapentapadu, Pentapadu Mandal,
West Godavari District.
6 Davala Narayanaswamy, S/o. Rama Rao.
R/o. Kaspapentapadu, Pentapadu Mandal,
West Godavari District.

..... PETITIONERS

AND

1 The District Collector,
West Godavari, Eluru.
2 The Mandal Revenue Officer,
Pentapadu, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may pleased to issue an appropriate writ, order or direction more in the nature of Writ of Mandamus to declare that the order of the District Collector, West Godavari, Eluru who is the 1st

Respondent herein passed in the proceedings bearing No. ROC A7/351/94 (REV) dated 10/09/1994 is violative of the principles of natural justice, arbitrary, capricious, illegal and void, and pass such other and further orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.T.DURGA PRASAD RAO

Counsel for the Respondents: GP FOR REVENUE

The Court made the following:

ORDER:

This writ petition is filed questioning the proceedings, dated 10.09.1994, issued by the first respondent-District Collector, West Godavari District, in Roc.No.A7/351/94 (Rev). In the said proceedings, the District Collector, West Godavari District, directed the Mandal Revenue Officer to resume the land covered by R.S.No.35 situated in Kaspa Pentapadu Village, Pentapadu Mandal, West Godavari District, for allotment of the same for burial ground.

In the affidavit, filed in support of the writ petition, it is stated that out of the total extent of Ac.1-97 cents of land covered by R.S.No.35 of Kaspa Pentapaud Village, Pentapadu Mandal, West Godavari District, an extent of Ac.1-07 cents was assigned for house-sites to the villagers and the petitioner Nos.4, 5 and 6 are among the said assignees. It is further stated that the petitioners 1, 2 and 3 have purchased the land in question under different registered sale deeds and since then they have been in possession and enjoyment of the said land. While so, the first respondent without issuing any notice to the petitioners, straightaway on the representation filed by the Muslim Welfare Association, T.P.Gudem, issued the impugned proceedings for resumption of the land in question.

Though the writ petition is of the year 1995, no counter-affidavit is filed till now. When the matter was taken up for hearing on 10.12.2004, 18.01.2005 and 20.01.2005, time and again it was adjourned on the request of the learned Government Pleader for filing the counter-affidavit. Though the matter was finally adjourned to this date for filing the counter-affidavit, even by this date also no counter-affidavit is filed contraverting the allegations of the petitioners.

In the impugned proceedings though it is stated that a part of the land in said survey number was earlier assigned for the house-sites to the villagers, but it does not indicate issuance of any prior notice to such assignees i.e., to the petitioners, who claim to be in possession of the land in question by way of assignment. Inasmuch as the petitioners 4, 5 and 6 are claiming to be the assignees and the petitioners 1, 2 and 3 are claiming longstanding possession on the land in question by way of purchase under registered sale deeds, unless they were served with prior notices no order can be passed to evict them so as to resume the land in question.

In that view of the matter and inasmuch as no counter-affidavit is filed and the impugned proceedings does not indicate issuance of any notice to the petitioners, who claim to be in possession of the land in question, the impugned proceedings in Roc.No.A7/351/94 (Rev) dated 10.09.1994 is set-aside. However, it is clarified that if the said land is required for any public purpose, it is open for the respondents to issue notices to the petitioners and then pass appropriate orders.

The writ petition is accordingly allowed. No order as to costs.

_____ (R.SUBHASH REDDY, J)

10.02.2005

DR

To

1 The District Collector,
West Godavari, Eluru.
2 The Mandal Revenue Officer,
Pentapadu, West Godavari District.

3 2 CCs to Government Pleader for Revenue,

High Court Buildings, Hyderabad. (OUT)

4 2 CD copies